IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5336 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH A VYAS

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 5336 of 1989

MR D.C. RAVAL FOR MR ANAND for Petitioner No. 1

MS. SHRUTI TRIVEDI FOR MR SN SHELAT for Respondent No. 1

MR. H.M. PRACHHAK, AGP, for Respondent No. 2

..... for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/04/2003

ORAL JUDGEMENT

Dr. Rajesh A. Vyas, petitioner, has filed this petition with a prayer to treat Rule 1 of Selection for

Superspecialities course as illegal, unconstitutional, null and void and further to direct the respondent authority namely respondent No. 2 i.e. The Director of Post-Graduate Studies & Research and the Chairman of Selection Committee for the Superspeciality Courses (M.Ch. & D.M.) to prepare select list for admission to the Superspecialities Course of D.M. (Cardiology) without considering Rule 1, Rule 3.1 and Rule 3.4. The aforesaid petition was filed on 27.7.1989.

2. When the aforesaid matter was placed for hearing before this court, Mr. Raval, learned advocate on behalf of Mr. M.R. Anand, learned senior advocate for the petitioner has invited my attention to a Division Bench order of this Court dated 18.8.1989 which reads as under:

> "The petitioner herein was granted ad interim relief to the effect that the respondents should not finalise the select list for admission in D.M. (Cardiology) till August 3, 1989. The said relief was extended from time to time till today. In as much as the petitioner questions collegewise institutional preference adopted by the rules of the University, we thought it fit to issue the Rule. The petitioner appeared in the examination and he was not selected. On the date when the ad interim relief was granted, the result of the petitioner was not known. As on date, it is clear that he was not declared fit for viva voce and practical examination. Thus, it is clear that he is not denied the opportunity to get admission on the ground of collegewise institutional preference in as much as he was not declared fit for viva voce and practical examination. In that view of the matter, there is no need to continue ad interim relief already granted in his favour. Hence, the ad-interim relief granted is vacated. We make it clear that the admissions made will be subject to the result of the petition. Mr. Anand says that he is pressing the point with regard to the students who have not applied in view of the collegewise institutional preference and it is in the nature of public interest litigation. He also questions the examination held by B.J. Medical College."

3. It may be noted that in the petition the petitioner has challenged Rule 1 & other rules of the selection for superspeciality courses (DM & M.Ch.) as illegal, unconstitutional, null and void and prayed to direct the respondent authorities to prepare the select list for

admission to the super specialities courses of D.M. (Cardiology) without considering Rule 1, Rule 3.1 and Rule 3.4. The learned counsel for the petitioner has also contended that there was a judgement of this Court where this Court has held such Rules to be unconstitutional. However, the details of the judgement have not been mentioned in the petition. By way of amendment also the petitioner has challenged Rule 3.1 and Rule 3.4 and prayed to direct the authorities to invite fresh application for preparing select list for admission to the super speciality courses of D.M. & M.Ch. and to prepare the select list without regard to Rule 1, Rule 3.1 and Rule 3.4. As this petition was filed somewhere in the year 1989, the judgment of this Court must be prior to 1989.

4. However, Ms. Trivedi for Mr. S.N. Shelat, learned advocate for respondent No. 1 has pointed that not in this very judgement but some point regarding admission to super speciality courses in Medicine was also challenged before the Hon'ble Supreme Court in the case of GUJARAT UNIVERSITY VS. RAJIV GOPINATH BHATT reported in AIR 1996 SC 2066 in connection with first preference for candidates of Gujarat University to be given. In that case the Hon'ble Apex Court held that if the rule has been framed that out of the merit list prepared, preference is to be given for admission in the super speciality courses to the students of the University in question per se it cannot be held to be arbitrary, unreasonable or violative of Article 14 of the Constitution.

5. As indicated above, earlier judgement of this Court was prior to 1989 whereas in this case from the discussion of the judgement of the Hon'ble Apex Court, the appeal is of 1996 and therefore the Hon'ble Supreme Court was not concerned with Rule 1, 3.1 and 3.4 which have been challenged in the present case. Therefore, without expressing any opinion on merit of the matter, as requested by the learned counsel for the petitioner that he does not want to press this petition on merit because by passage of time, this petition has become infructuous. In view of the same, the petition stands disposed of as having become infructuous with no order as to costs. Rule is discharged.

(K.M. MEHTA, J)

(pkn)